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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,312	05/01/2006	Peter Bryan Malcolm	0112634.00122US1	4877
23483	7590	06/02/2009	EXAMINER	
WILMERHALE/BOSTON			HOANG, SON T	
60 STATE STREET			ART UNIT	
BOSTON, MA 02109			PAPER NUMBER	
			2165	
			NOTIFICATION DATE	
			DELIVERY MODE	
			06/02/2009	
			ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief	Application No. 10/534,312	Applicant(s) MALCOLM, PETER BRYAN	
	Examiner SON T. HOANG	Art Unit 2165	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 03 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: None.
 Claim(s) objected to: None.
 Claim(s) rejected: 1-77.
 Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Neveen Abel-Jalil/
 Supervisory Patent Examiner, Art Unit 2165

/S. T. H./
 Examiner, Art Unit 2165

Continuation of 11. does NOT place the application in condition for allowance because:

I) Applicant's amendment filed on May 15, 2009 is eligible to be entered for appeal purposes since Applicant's arguments towards the pending claims 1-77 are not persuasive.

First, Applicant argues towards independent claim 1 regarding the fact that the combination of Clifton and Crocitti does not teach receiving "a request from an application program for storage of a data file of application data, the request including an expiry date..."

The Examiner respectfully disagrees to the above remarks. Accordingly, Crocitti discloses the request for data storage is received from an application program in respect of a data file of application data (a storage request is issued by a service provider for storing information items corresponding to a distinct application of the same service, [0027] and [0072]), and the request sets an expiry date for the data file (the constraint or the information item relating to the date of expiry or the duration of validity is provided by the service provider, [0048]). It is well inherent that the application program is indeed the service provider since by definition, a service provider is an entity providing services to other entities.

Second, Applicant argues towards claim 1 regarding the fact that the combination of Clifton and Crocitti does not teach receiving storage based on expiration on a "file-by-file" basis.

The Examiner respectfully disagrees to the above remarks. Accordingly, Clifton discloses selecting for the data file which of the plurality of storage devices will be used to store the data file in accordance with the characteristics of the application data to be stored, including the expiry date, and the state of the plurality of storage devices (The access to the volume selected for the data set to be stored is to a volume with sufficient free space (excluding reserved space) to allocate the data set in question. A volume is chosen for which the volume expiration date is equal to or exceeds, but is closest to, the expiration date of the data set to be stored, [Column 17, Lines 13-18]). Further to Clifton, Crocitti discloses a file-to-file basis storage selection (The usage constraints for the information item to be stored or the characteristics of this information item are used essentially by the processing module (11) and by the reorganization module (12) in order to determine the best possible location in one of the storage means (21, 22, 23), [0033]).

Third, Applicant argues towards claim 1 regarding the fact that the combination of Clifton and Crocitti would not have a predictable outcome.

The Examiner respectfully disagrees to the above remarks. Since both references teach selective storage for a data set or data item (see second argument above). Hence, they are deemed appropriate to combine with one another.

II) Independent claims 28-29, 52, 54 and 77 recite similar limitations as in independent claim 1. Hence, claims 1, 28-29, 52, 54, 77 and their corresponding dependent claims are unpatentable in view of the combination of Clifton and Crocitti as presented above.

III) In view of the above, the rejections mailed on November 28, 2008 are hereby sustained. An excerpt of the rejections is reproduced below:

Regarding claim 1, Clifton clearly shows and discloses a method of operating a data processing system, the system comprising one or more application programs requiring persistent data storage for data files of application data, a plurality of storage devices each accessible via a computer network to one or more computers executing the application programs, and a broker program (Abstract and Figure 8), wherein the method comprises:

receiving, by means of the broker program, a request for storage of a data file of application data (The first process or method step shown in the first block is to request a volume selection for storing the data set that requires a storage space. This request can be made by the primary host CPU 20 of the figures. The volume records for the volume group is then searched for all of the volumes that are eligible for storing the data set, [Column 22, Lines 59-64]), and

selecting for the data file which of the plurality of storage devices will be used to store the data file in accordance with the characteristics of the application data to be stored, including the expiry date, and the state of the plurality of storage devices (The access to the volume selected for the data set to be stored is to a volume with sufficient free space (excluding reserved space) to allocate the data set in question. A volume is chosen for which the volume expiration date is equal to or exceeds, but is closest to, the expiration date of the data set to be stored, [Column 17, Lines 13-18]).

Clifton does not disclose the request for data storage is received from the application program itself, and the request is in respect of a 'data file' of application data, and specified an expiry date for the data file.

However, Crocitti teaches the request for data storage is received from an application program in respect of a data file of application data (a storage request is issued by a service provider for storing information items corresponding to a distinct application of the same service, [0027] and [0072]), and the request sets an expiry date for the data file (the constraint or the information item relating to the date of expiry or the duration of validity is provided by the service provider, [0048]).

It would have been obvious to an ordinary person skilled in the art at the time of the invention to incorporate the teachings of Crocitti with the teachings of Clifton for the purpose of providing an automatic memory management system for interactive service applications to improve access to the information stored and/or to free some available space for storage ([0004] of Crocitti)..